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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JENNIFER PATRICIA STATON,

Plaintiff,

vs.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No.: 2:20-CV-1940-DJA

**UNOPPOSED MOTION FOR EXTENSION OF
TIME TO FILE CERTIFIED
ADMINISTRATIVE RECORD AND ANSWER;
DECLARATIONS OF JEBBY RASPUTNIS AND
CHRISTIANNE VOEGELE**

(SECOND REQUEST)

1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through
 2 his undersigned attorneys, hereby moves for a sixty-day extension of time to file the Certified
 3 Administrative Record (CAR) and answer to Plaintiff’s Complaint. The CAR and answer to Plaintiff’s
 4 Complaint are due to be filed by March 22, 2021. This is the Commissioner’s second request for an
 5 extension. The following provides the Court with an updated status of the agency’s ability to prepare
 6 CARs.
 7

8 In light of the global COVID-19 pandemic, the Social Security Administration (“SSA” or the
 9 “Agency”) has taken the unprecedented step of suspending in-office services to the public:
 10 <https://www.ssa.gov/coronavirus/>. The Agency is focusing on providing the most critical services by
 11 mail, phone and online to those most in need. SSA is also taking additional steps to protect its employees
 12 and help stop the spread of COVID-19, maximizing social distancing, including significantly limiting
 13 employee access to SSA facilities for health and safety only and has moved toward a temporary virtual
 14 work environment. Electronic processes allow some of SSA’s most critical work to continue with
 15 minimal interruption; other workloads have been suspended until the health crisis abates or the Agency is
 16 able to create new electronic business processes.
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18 For purposes of this particular case, the public health emergency pandemic has significantly
 19 impacted operations in the Social Security Administration’s Office of Appellate Operations (OAO) in
 20 Falls Church, Virginia. That office is responsible for physically producing the administrative record that
 21 is required to adjudicate the case under Sections 205(g) and (h) of the Social Security Act, 42 U.S.C.
 22 § 405(g) and (h). *See* SSA Program Operations Manual System GN 03106.025, *available at*
 23 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203106025>.
 24

25 As detailed in the attached declarations, beginning March 16, 2020, OAO’s staff members began
 26 to telework to protect employee health and prevent further spread of COVID-19. At that time, critical in-

1 person physical tasks associated with preparing the administrative record could not be accomplished. For
2 example, prior to the COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all
3 hearing recordings, which are part of the administrative record, were downloaded onto compact discs and
4 encrypted. OAO securely routed the encrypted discs to a private contractor through a daily pickup and
5 delivery service at the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor
6 would transcribe the hearing recording and send the paper copy of the hearing transcript back to OAO.
7 OAO personnel would then scan the hearing transcript into the electronic record or place the hearing
8 transcript in the paper case file. Thereafter, OAO personnel would assemble the administrative record in
9 a prescribed order.
10

11 To ensure a continuity of operations, OAO has been actively pursuing mitigation efforts to allow
12 the remote preparation of administrative records. For cases in which the private contractors were already
13 in possession of hearing recordings for transcription, with the assistance of the Office of Acquisitions and
14 Grants (OAG), OAO received approval to receive these transcripts from the private contractors via
15 secured email, e.g., using password protection and redacted Social Security Numbers. In April 2020,
16 OAO began receiving such hearing transcripts from private contractors via secured email.
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18 For cases in which OAO had not yet submitted recordings to the private contractors before March
19 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May
20 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for
21 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues
22 that arose, particularly with large files.
23

24 As explained in the most recent Rasputnis declaration, OAO's production of transcripts is now
25 exceeding the production rate prior to the COVID-19 pandemic. However, the number of new cases filed
26 in federal court has also increased. In the last quarter of fiscal year 2020 and the first quarter of fiscal

1 year 2021, SSA averaged more than 2,257 new case receipts per month, compared to an average of 1,458
2 new case receipts in the last quarter of fiscal year 2019 and the first quarter of fiscal year 2020.

3 OAO has prioritized CAR preparation based on objective factors, such as filing date, and is
4 working diligently to address the backlog of CARS. Out of fairness to all social security claimants,
5 Defendant respectfully requests that the Court defer to OAO's prioritization of cases for CAR preparation
6 and maintain consistency in the length of extensions granted in social security cases, absent a showing of
7 exceptional circumstances. Counsel for Defendant further states that the Office of General Counsel
8 (OGC) is monitoring receipt of transcripts on a daily basis and is committed to filing Answers promptly
9 upon receipt and review of the administrative records. Given the volume of pending cases, Defendant
10 requests an extension in which to respond to the Complaint until May 21, 2021. If Defendant is unable to
11 produce the certified administrative record necessary to file an Answer in accordance with this Order,
12 Defendant shall request an additional extension prior to the due date.

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15 Given the volume of pending cases, Defendant requests an extension in which to respond to the
16 Complaint until May 21, 2021.

17 On March 19, 2021, the undersigned conferred with Plaintiff's Counsel, who has no objection to
18 the requested extension.

19
20 It is therefore respectfully requested that Defendant be granted an extension of time to file the CAR
21 and answer to Plaintiff's Complaint, through and including May 21, 2021.

1 Dated: March 22, 2021

Respectfully submitted,

2 CHRISTOPHER CHIOU
3 Acting United States Attorney

4 /s/ Marcelo Illarmo
5 MARCELO ILLARMO
6 Special Assistant United States Attorney

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10 IT IS SO ORDERED:

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12 _____
13 UNITED STATES MAGISTRATE JUDGE

14 DATED: March 23, 2021
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CERTIFICATE OF SERVICE

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 160 Spear Street, Suite 800, San Francisco, California 94105. I am not a party to the above-entitled action. On the date set forth below, I caused service of **UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE CERTIFIED ADMINISTRATIVE RECORD AND ANSWER; DECLARATIONS OF JEBBY RASPUTNIS AND CHRISTIANNE VOEGELE**; on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which provides electronic notice of the filing:

Hal Taylor
Hal Taylor, Attorney at Law
223 Marsh Ave
Reno, NV 89509

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 22, 2021

/s/Marcelo Illarmo
MARCELO ILLARMO
Special Assistant United States Attorney

DECLARATION OF JEBBY RASPUTNIS
OFFICE OF APPELLATE OPERATIONS
SOCIAL SECURITY ADMINISTRATION

I, JEBBY RASPUTNIS, Executive Director of the Social Security Administration's Office of Appellate Operations (OAO), declare and state as follows:

- 1) My office is responsible for, among other things, preparing certified copies of administrative records (CARs) for Federal court review when claimants appeal the final decisions of the Commissioner of Social Security.
- 2) Beginning in mid-March of 2020, the Social Security Administration (agency) restricted physical access to our buildings because of the COVID-19 pandemic. Since that time, OAO has been working to overhaul, redo, refine, and streamline our business processes to continue operations and meet our mission to serve the public. Despite many challenges in transitioning to a completely new business process, we have reached and surpassed pre-pandemic levels of electronic CAR production. Much of the delay and uncertainty in the CAR production process has stemmed from how we transmit hearing recordings to our vendors, and how our vendors return completed transcripts to us. We have worked hard to refine this process as well as implementing new processes, updating vendor agreements, and making staffing changes. These included:
 - reworking how we transmit the audio files to our vendors from a fully in-person exchange of CDs and completed transcripts to a now fully direct access and electronic exchange of completed transcripts;
 - seeking additional vendor capacity; and
 - leveraging in-house transcription capacity by establishing a transcription cadre with updated technology and working with agency closed captioners.

- 3) We are now, between our vendors and our in-house efforts, able to produce more than 700 transcripts¹ on an average work week. Prior to the COVID-19 pandemic, we averaged 300-400 hearing transcriptions per week.
- 4) As we worked to transition this workload, and our external vendors, to a fully virtual process, the number of new cases filed in federal court also increased.² This was a direct result of the agency's initiative to reduce the number of requests for administrative review pending before the Appeals Council, the final step of the administrative process. While we had planned for this increase, the combined effects of the pandemic-related disruptions and the increase in new court filings lead to a significant backlog in CAR preparation. However, as a result of our process improvements and increased production capacity from our contracted transcription vendors, we now have begun reducing our pending backlog. At the end of January 2021 we had 11,111 pending cases. At the end of February 2021 we had 10,679 pending cases, representing a decrease in our backlog of more than 400 cases.

¹ Individual cases often have more than one hearing to transcribe.

² In the last quarter of fiscal year 2020 and the first quarter of fiscal year 2021, we averaged more than 2,257 new case receipts per month, compared to an average of 1,458 new case receipts in the last quarter of fiscal year 2019 and the first quarter of fiscal year 2020. *See also Chief Justice Roberts' 2020 Year-End Report on the Federal Judiciary, Appendix Workload of the Courts*, available at <https://www.supremecourt.gov/publicinfo/year-end/2020year-endreport.pdf> (“Cases with the United States as defendant grew 16% [in FY20], primarily reflecting increases in social security cases and prisoner petitions.”)

The following chart shows OAO's receipts, dispositions³ and pending CAR workload for the first five months of FY2021.

Time Period	New Court Case Receipts	Dispositions	Pending
OCT 2020	3,074	2,115	9,693
NOV 2020	1,999	1,483	10,209
DEC 2020	1,703	1,672	10,240
JAN 2021	2,638	1,767	11,111
FEB 2021	1,880	2,312	10,679

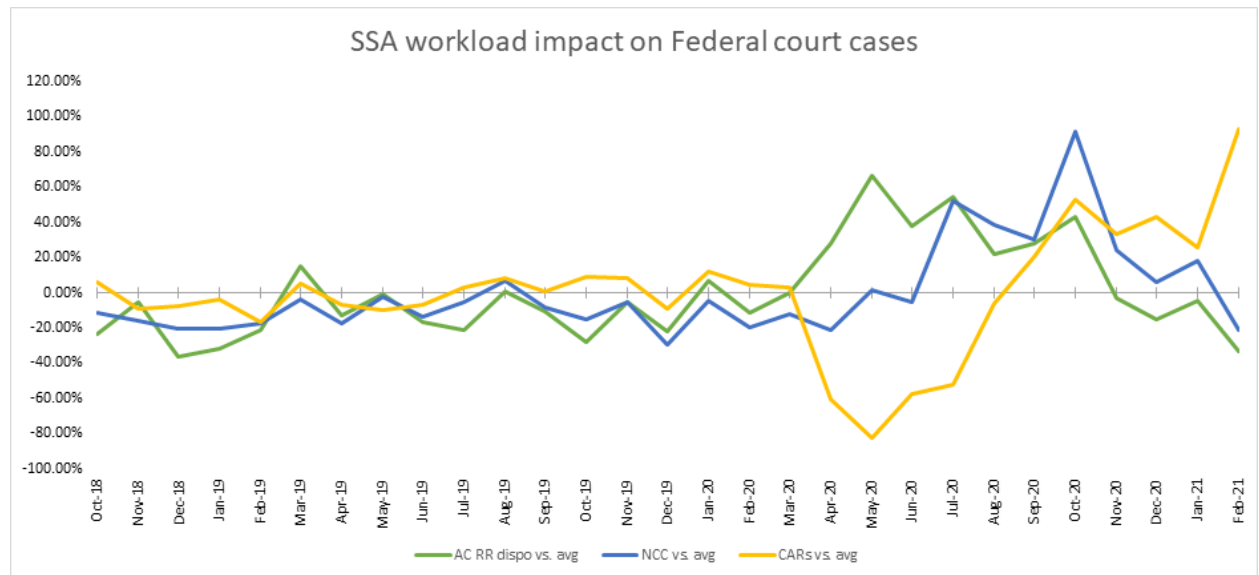
- 5) OAO continues to address the significant workflow fluctuations the agency has experienced since approximately March 2020. The following line graph tracks three different workflow measures since the beginning of FY2019 and how they intersect:
- Green:** requests for review decided by the Appeals Council;
 - Blue:** new federal court cases filed by plaintiffs; and
 - Gold:** CARs docketed by the Office of the General Counsel.⁴

³ While dispositions primarily include CARs for filing with the court, it also includes requests for remand to the ALJ for further actions, and other actions.

https://www.ssa.gov/appeals/DataSets/08_National_New_Court_Cases_and_Remands.html

⁴ For Appeals Council dispositions (green line) and new federal court case filings (blue line), the graph is based on publicly-available data through December 2020. See <https://www.ssa.gov/appeals/publicusefiles.html>. The data for more recent months, as well as all of the data for CAR docketing (gold line), are drawn from the agency's internal case tracking systems.

The graph shows the deviation from the average for each of these three workflow measures.⁵ Notably, this visual representation illustrates the rapid changes that began in March 2020 and continue to date.



- 6) Overall, the timeframe for delivering an electronic CAR in any individual case has improved. The current average processing time is 138 days. Although we remain subject to some constraints, we continue to work on increasing productivity by collaborating with our vendors and searching out and utilizing technological enhancements. We ask for continued patience as we work to increase our efficiency and production of CARs, reduce the current backlog, and address rising court case filings.

⁵ The averages are calculated since October 2018. By way of example, in March 2020, OGC docketed about 80% fewer CARs than average, while the Appeals Council acted on about 60% more requests for review than average.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 17, 2021
Silver Spring, MD

/s/ Jebby Rasputnis
Jebby Rasputnis

DECLARATION OF CHRISTIANNE VOEGELE
OFFICE OF APPELLATE OPERATIONS
SOCIAL SECURITY ADMINISTRATION

I, CHRISTIANNE VOEGELE, Chief of Court Case Preparation and Review Branch 1, and Acting Chief of Court Case Preparation and Review Branch 3, of the Social Security Administration's Office of Appellate Operations (OAO), declare and state as follows:

(1) Under direct delegation from the Commissioner of Social Security, the Office of Hearings Operations (OHO) administers a nationwide hearings program, and OAO administers a nationwide appeals program. OHO includes the Administrative Law Judges who hold hearings on claims arising under Titles II and XVI of the Social Security Act, as amended, when a claimant who is dissatisfied with their administrative determination requests a hearing. OAO includes the Appeals Council, which reviews claims when a claimant is dissatisfied with the decision rendered by an Administrative Law Judge. OAO also provides professional and technical advice to the Deputy Commissioner and Administrative Appeals Judges of the Appeals Council in the processing of cases in which a claimant has filed a civil action.

(2) One function of the Appeals Council is to act on requests for review of hearing decisions made by Administrative Law Judges and to either grant, deny or dismiss any such request. Under the regulations of the Social Security Administration, if the Appeals Council denies a timely request for review of a hearing decision, that hearing decision becomes the "final decision" within the meaning of, and subject to, the provisions for judicial review in section 205(g) of the Social Security Act, as amended (42 U.S.C. section 405(g)). The first sentence of that section reads as follows:

"Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may

obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner may allow.***”

(3) I am responsible for the processing of claims under Titles II and XVI of the Social Security Act, as amended, whenever a civil action has been filed in the Fourth, Sixth, Seventh, Ninth, Eleventh, and District of Columbia judicial circuits. As described below, OAO’s business processes are true to the best of my knowledge and belief.

- a) If a civil action is properly commenced, the third sentence of 42 U.S.C. 405(g) states the following: “As part of the Commissioner’s answer[,] the Commissioner shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.” On behalf of the Commissioner of the Social Security Administration, OAO personnel are responsible for preparing a certified copy of the transcript of the record.
- b) Upon notification of the civil action by the U.S. Attorney’s Office or the Social Security Administration’s Office of General Counsel, OAO personnel must locate and retrieve the plaintiff’s claim(s) file, which is in either a paper or electronic format. The file contains both evidentiary and procedural documents, and the recording of any hearing held before an Administrative Law Judge.
- c) Upon locating the file, OAO personnel determines if the claimant timely filed the civil action and, if so, routes the recording of the hearing to a private contractor for transcription.
- d) Historically and prior to the COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all hearing recordings were downloaded onto compact discs, and these discs were encrypted. OAO securely routed the encrypted discs to a

private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in Falls Church, Virginia. The contractor is responsible for all tasks necessary for transcription typing services. It is estimated that an average hearing lasts 45 minutes and results in an average of 33 pages of transcript. Each transcript contains a certification statement by a transcriber and proofreader. Transcription of a hearing recording can take up to 20 business days, but is generally transcribed in 5-10 business days. After the contractor transcribed the hearing recording, a paper copy of the hearing transcript was sent back via a delivery service to the ODS in Falls Church, Virginia. OAO personnel would then scan the hearing transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter, OAO personnel would assemble the administrative record in a prescribed order.

- e) Most cases are adjudicated using the Social Security Administration's Electronic Disability Collect System (EDCS). Even using EDCS, most cases historically required physical, in-house scanning and uploading of hearing transcripts. This work was performed at the ODS.
- f) Even for cases using EDCS that are in electronic format, many jurisdictions require encrypted compact discs and paper copies of the certified administrative record. All paper copies are produced at the ODS, and all compact discs and paper copies are shipped via United States Parcel Service from the ODS.
- g) Due to the COVID-19 pandemic, OAO staff are not currently authorized to report to the office due to health and safety concerns. On or about March 16, 2020, OAO began working remotely. Consequently, OAO had been unable to complete certified administrative records on any cases that required in-office work at the ODS,

including any cases in which the transcript(s) of the hearing recording(s) had not already been uploaded to the electronic file.

- h) To ensure a continuity of operations, OAO has been actively pursuing mitigation efforts to allow the remote preparation of as many administrative records as possible.
 - a. For cases in which the private contractors were already in possession of hearing recordings for transcription, with the assistance of the Office of Acquisitions and Grants (OAG), OAO received approval to receive these transcripts from the private contractors via secured email, e.g., using password protection and redacted Social Security Numbers. In April 2020, OAO began receiving such hearing transcripts from private contractors via secured email.
 - b. Subsequently, OAO consulted with OAG and the Office of the General Counsel, and obtained approval for a new process to replace encrypted compact discs. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for transcription. Through the month of May, OAO and the contractors worked to resolve technical issues that arose, particularly with large files. The process is functioning now, albeit at a fraction of normal productivity.
- i) OAO plans to continue to explore all options available to complete the preparation of certified electronic records during the COVID-19 pandemic.
- j) OAO generally prioritizes the preparation of the certified administrative records based on receipt dates, with the oldest receipt dates processed first. OAO will work to ensure the oldest pending cases, including court remands and final decisions, are given priority processing.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

June 17, 2020

Date



CHRISTIANNE VOEGELE